UMMI HAFILDA ALI

v.

KETUA SETIAUSAHA PARTI ISLAM SE MALAYSIA (PAS) & ORS

HIGH COURT MALAYA, KUALA LUMPUR
PAJAN SINGH GILL FCJ
[CIVIL SUIT NO: S1[S2]-23-48-1999]
6 JUNE 2006

TORT: *Defamation - Publication of alleged libellous article in newsletter - Whether referred to plaintiff and case involving former Deputy Prime Minister of Malaysia - Whether defamatory of plaintiff who was prime witness in case therein - Whether there was publication - Defamation Act 1957, s. 4*

The plaintiff, a freelance consultant with a production house, was a prime witness in a case involving the former Deputy Prime Minister of Malaysia ('DPM'), *ie, PP v. Dato Seri Anwar Ibrahim*. The plaintiff claimed that the defendants published defamatory statements in an article ('the impugned article') about her in a newsletter called the "Harakah". She alleged the impugned article referred to her and the surrounding circumstances involving the trial of the former DPM.

Held (in plaintiff's favour):

(1) The alleged defamatory statements clearly put the plaintiff in a bad light. It depicted the plaintiff as a prostitute and a mentally unstable person obsessed with the former DPM and also a bad taste in clothing. It also depicted that she was disowned by her father and that she co-authored the infamous "50 Dalil" book involving the former DPM. Taking their ordinary and natural meaning, the statements were indeed defamatory of the plaintiff. They had lowered the plaintiff in the estimation of right-thinking members of society and had exposed her to hatred, contempt and ridicule. (paras 25 & 26)

(2) The evidence adduced supported the fact that an ordinary person reading the article would have no doubt as to whom the article was referring to. The characters depicted therein could be clearly identified despite the defendants' contention that the characters were fictitious, non-factual, non-existent

A and satire. The events leading up to the arrest of the former DPM and the on-going criminal trial was uppermost in the minds of the public at the material time. It followed that the article referred to the plaintiff and not anyone else. (paras 31, 32, 34 & 35)

B

(3) There was publication as the article was published in the Harakah and Harakah had a sizeable circulation. (para 36)

(4) The defendants' contention that the article was made in jest, humorous, fictional and an absurdity could not be accepted. C There was nothing humorous in calling someone a "small time hooker". Neither was it a laughable matter in ridiculing one's personal life or a person's disability. The 4th defendant's act of printing the article without reading the contents bordered on a criminal act. It was a blatant and reckless act of D profiteering regardless of the indemnity agreed to by the 1st defendant. The defence of innocent dissemination was not borne out in light of the evidence adduced at the trial. In the circumstances, the plaintiff had proved her case against the defendants on a balance of probabilities. (paras 39, 40, 41, 42 E & 43)

(5) The plaintiff's claim for loss of income and contracts was unsupported by any conclusive evidence. However, she had lost the possibilities of marriage due to the defamatory F statements made about her. Also, her friendships and reputation as a businesswoman was affected by derogatory remarks made by the public against her. Section 4 of the Defamation Act 1957 was applicable. (paras 44 & 45)

G **(6)** The 4th defendant never made any attempt to amend the impugned article before publication and did not apologise or offer to apologise to the plaintiff. None of the defendants made any attempt to verify the facts, truth or otherwise of the impugned article before publishing it. (para 46)

H

(7) In an action for defamation, damages awarded to the plaintiff are assessed on a compensatory basis and the trend now indicates that it should be on a modest scale. (para 47)

[RM100,000 general damages against 1st, 2nd and 3rd defendants; I *RM100,000 general damages against 4th defendant; 8% PA interest on judgment sum from date of filing of writ until full realisation; injunction against defendants from further publishing words defamatory of plaintiff; cost to plaintiff.]*

Case(s) referred to:

Chin Choon v. Chua Jui Meng [2005] 2 CLJ 569 CA ***(refd)***
Hasnul Abdul Hadi v. Bulat Mohamed & Anor [1978] 1 MLJ 75 ***(refd)***
Karpal Singh Ram Singh v. DP Vijandran [2001] 3 CLJ 871 CA ***(refd)***
Lewis v. Daily Telegraph Ltd [1963] 2 All ER 151 ***(refd)***
Morgan v. Odhams Press Ltd [1971] 1 WLR 1239 ***(refd)***
Pullman v. W Hill & Co Ltd [1891] QB 524 ***(refd)***
Sim v. Stretch [1936] 2 All ER 1237 ***(refd)***
Syed Husin Ali v. Syarikat Perchetakan Utusan Melayu Bhd & Anor [1973] 2 MLJ 56 ***(refd)***
Utusan Melayu (M) Bhd & Ors v. Tjanting Handicraft Sdn Bhd & Anor [2005] 1 CLJ 71 CA ***(refd)***

Legislation referred to:

Defamation Act 1957, s. 4

For the plaintiff - Muhammad Shafee Abdullah (Kaushalya Rajathurai with him); M/s Shafee & Co
For the 1st, 2nd & 3rd defendants - BE Teh; M/s Teh & Assoc
For the 4th defendant - Bahari Yeow; M/s Lee Hishamuddin

Reported by Usha Thiagarajah

JUDGMENT

Pajan Singh Gill FCJ:

[1] The plaintiff was aged 34 when this writ was filed. She is a freelance consultant with a production house by the name of Bestarisma, and was thrust into the limelight for her involvement as a prime witness in the case of *PP v. Dato' Seri Anwar Ibrahim*, the former Deputy Prime Minister of Malaysia.

[2] The first defendant is a political party established and registered in Malaysia under the Societies Act 1966 which is also the Publisher of "Harakah", a party newsletter. The second defendant, at the material time was the permit holder for the publication of "Harakah". The third defendant was at the material time a member of the first defendant and also the Chief Editor of Harakah. The fourth (4th) defendant at the material time is the printer of Harakah. And the fifth defendant is an individual, the author of an article which is the subject matter to this case.

[3] This action arises out of an article published in p. 22 of Harakah dated 29 March 1999, under the heading "Malaysia Sweeps 10 Oscars!" (hereinafter referred to as "the article"). This article was published before the decision in former Deputy Prime Minister's criminal trial was announced.

[4] Evidence was adduced at the trial that the permit which was issued to the 1st defendant to publish Harakah was meant as a party newsletter intended for members only. However, witnesses testified that Harakah's circulation during the material time had reached the level of a mainstream newspaper and that its readership was not restricted to party members only.

[5] It was alleged by the plaintiff that the 1st, 2nd and 3rd defendant falsely and maliciously published and/or caused to be published, the 4th defendant falsely and maliciously printed and/or published and/or caused to be printed and/or published and the 5th defendant falsely and maliciously wrote and published of and concerning the plaintiff and of her in the way of her said business and/or occupation and/or calling and in relation to her conduct therein, interalia, the following words ... (for the purpose of this trial only 3 paragraphs were relevant to the plaintiff's case.) namely:

> **Best Original Screenplay: "Pulp Dalil"**
>
> Based loosely on the Quentin Tarantino hit "Pulp Fiction", the film tells the story of a small time hoodlum, Caled Jeffry, who leaves his life of crime on the streets to embark upon a life of crime in literature. He fails his university entrance test when he is unable to recite the Alphabet (he could only manage to get to "D"), but is consoled by Ummi Thurman Ali, a small time hooker obsessed with Deputy Prime Ministers. She helps Jeffry embark upon his super-novel-she writing the stories and dotting the "i"s-after the two of them are inspired by reading a copy of the National Enquirer. They manage to publish their book "Puld Dalil" when a short balding man with a liking for small big-breasted woman funds its publication. The book becomes an overnight hit, and Jeffry achieves his lifetime ambition of having orange hair.
>
> **Best Directing: "Green Card"**
>
> This romantic comedy tells the story of young Filipino man who leaves his poor village in search of work in Malaysia. He marries a tacky Malaysian bimbo (played by Ummi Thurman Ali) in the hope of getting a work permit – a green card – but divorces her

when he suddenly discovers Anwar Ibrahim's picture under her pillow. Fortunately, he is offered a Malaysian identity card in return for voting for the "right" candidate. The story ends on a happy note when he not only obtains work, but is also elected the State's Chief Minister and hops over to the MIC the very next day.

Best Actress: "Fatal Attraction"

This crime thriller tells the story of a mentally unbalanced woman (yes, Ummi Thurman Ali again!) who designs tacky, gaudy clothing and is cursed with a physical disability – she was born with a hand phone permanently attached to her right ear. Her father disowns her after he is struck blind by the rather loud colours of her dresses. In a fit of anguish, she becomes a psychotic and is obsessed with the Deputy Prime Minister. At first she just carries a small photograph of him everywhere she went – but her family finally recognises she needs major help when she tries to squeeze a 40 foot by 20 foot framed canvass painting of Anwar into her small Christian Dior handbag. She dies horribly – she is electrocuted styling and blow drying her hair – and her body is made into a statue posing fashionably in front of the steps of the High Court building in Kuala Lumpur. Her distraught brother – Az One – becomes psychotic too and becomes obsessed with a local singer actress (watch out for "Fatal Attraction II"!).

This movie was also awarded the Oscar for Best Sound Recording by Sng Chihuahua.

[6] In her statement of claim, the Plaintiff listed out particulars of identification comparing the characters in the article and to her, person or persons related to her, or the surrounding circumstances in which she was involved especially the trial of the former Deputy Prime Minister. The facts and matters relied on to show that the said words and character "Ummi Thurman Ali" referred to and were understood to refer to the plaintiff are as follows inter alia:

i. The name "Ummi Thurman Ali" bears a strong and close resemblance to "Ummi Hafilda Ali", the Plaintiff;

ii. The alleged movie title "Pulp Dalil" incorporates the Malay word "Dalil" which was much publicized in the media as of 1998 as a result of the said word being part of the title of a book entitled "50 Dalil Mengapa Anwar Tidak Boleh Jadi PM", more popularly referred to as "50 Dalil" (hereinafter referred to as the Book). The alleged movie title, "Pulp Dalil" bears a strong and close resemblance to the title of that Book;

A iii. The author of the book is one Khalid Jeffry. The reference to "Caled Jeffry" in the said Article and/or the said Words as the author of "Pulp Dalil" bears a strong and close resemblance to and would have been understood by the ordinary and reasonable person as referring to the said author of "50 Dalil";

B iv. The plaintiff is prominently featured in the Book, which became the subject matter of an investigation and subsequently led to criminal charges being brought against the former Deputy Prime Minister, in the course of which she was C called by the prosecution as their witness, this trial was widely and prominently reported in the local and foreign media, verbatim and on a daily basis resulting in the Plaintiff being made a prominent public figure.

D v. The plaintiff has a brother by the name of Azwan Ali. The reference to "Az One" in the article bears a strong and close resemblance to "Azwan". In the article "Az One" was referred to as the brother of "Ummi Thurman Ali", indicating a clear reference to the plaintiff;

E vi. The plaintiff daily appearance as a witness in the trial of former Deputy Prime Minister were captured in photographs and broadcast in television and her appearance and dressing received prominent media attention. The article did mention the appearance and dressing style of "Ummi Thurman Ali";

F vii. Following the above the plaintiff was occasionally shown speaking to her hand phone. The article did made reference to this fact when referring to "Ummi Thurman Ali";

G viii. By reason of their knowledge of the facts and matters stated above, the plaintiff was identified by a large but unquantifiable number of readers of the article in Harakah as the individual referred to as "Ummi Thurman Ali".

[7] The plaintiff claims that these passages from the article H clearly referred to her, and persons related to her, under the prevailing circumstances ie, Dato Seri Anwar Ibrahim's trial.

[8] It was contended by the plaintiff in her statement of claim that by reason of the publication of the said defamatory article, I the plaintiff has in consequence been seriously injured in her character, credit and reputation and in the way of her said business and/or occupation and/or calling, and has been brought

into public scandal, odium and contempt and that the plaintiff has been lowered in the estimation of right thinking members of society. The plaintiff was subjected to severe humiliation and embarrassment as a result of the publication of the article by the defendants which carried imputations of the gravest kind as to her chastity and /or moral conduct.

The Defence

[9] Judgment in default was entered against the 5th defendant. The 1st, 2nd and 3rd defendants filed a joint statement of defence. The 4th defendant file his defence separately.

[10] In their defence the 1st, 2nd and 3rd defendants aver among others, that they deny they had falsely and maliciously published and/or cause to be published the said article concerning the plaintiff and of her in the way of her said business and/or occupation and/or calling and in relation to her conduct therein, (as per para 8, plaintiff's statement of claim).

[11] The 1st, 2nd and 3rd defendants in their defence, state that:

a. the words pleaded by the plaintiff in the said para. 8 (the said words) cited from the said article and forms only part of the said article.

b. Deny that they had published the said words concerning and relating to the plaintiff or her business or occupation or calling with regard to the conduct of the plaintiff as alleged in para. 8 of the statement of claim.

   Further, these defendants deny that the said article or the said words were published with malice.

[12] They also claim that they have no knowledge that the translation of the said words in Bahasa Malaysia as pleaded in para. 9 of the statement of claim is a correct and direct translation.

[13] Further these defendants aver that the words were:

a. satire;

b. fictional or a creation of fantasy;

c. not a report relating to individuals or events which really occurred;

A d. all characters mentioned were fictitious in nature and not intended to refer to any person.

[14] The 4th defendant in their defence aver as follows:

B 1. that the article is a product of fiction and that all the characters in the article are fictitious and are never intended to refer to any living person;

2. that the character "Ummi Thurman Ali' does not in whatsoever manner refer to the plaintiff due to the following C facts:

a. the plaintiff is not the co-author of the book;

b. the plaintiff is not married to the author of the book or to a Filipino; D

c. the plaintiff is not an actress at the material time nor does she ever won any Academy Awards;

d. the plaintiff is not a fashion designer;

E e. there is no statue of the plaintiff in front of the High Court building.

[15] In view of the above facts, the 4th defendant aver that the article consists of abundant fictitious statements which no F reasonable person would understand the words to refer to the plaintiff.

Findings Of The Court

G **[16]** In the course of this trial the plaintiff has called 3 witnesses in support of her case including herself, while the 1st, 2nd and 3rd defendant did not call any witness. The 4th defendant called their production assistant manager as a witness. The 5th defendant did not call any witness as judgment was already entered against him.

H **[17]** In order to establish her claim, the plaintiff must first ascertain that the article in this case is:

1. defamatory of her;

I 2. refers to the plaintiff; and

3. it has been published to 3rd party.

[18] A statement (or in this case the article) is defamatory when it injures the reputation of another by exposing him to hatred, contempt or ridicule or which tends to lower him in the esteem of right-thinking members of society (*Sim v. Stretch* [1936] 2 All ER 1237).

[19] In *Lewis v. Daily Telegraph Ltd* [1963] 2 All ER 151 at 154 Lord Reid said as follows:

> There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs. I leave aside questions of innuendo where the reader has some special knowledge which might lead him to attribute to the words a meaning not apparent to those who do not have that knowledge.

[20] The alleged offending articles state as follows:

> **Best Original Screenplay: "Pulp Dalil"**
>
> Based loosely on the Quentin Tarantino hit "Pulp Fiction", ..., Caled Jeffry, ... but is consoled by Ummi Thurman Ali, a small time hooker obsessed with Deputy Prime Ministers ... They manage to publish their book "Pulp Dalil" ... Jeffry achieves his lifetime ambition of having orange hair.
>
> **Best Directing: "Green Card"**
>
> ... He marries a tacky Malaysian bimbo (played by Ummi Thuman Ali ... when he suddenly discovers Anwar Ibrahim's picture under her pillow ...
>
> **Best Actress: "Fatal Attraction"**
>
> This crime thriller ... (yes, Ummi Thurman Ali again!) who designs tacky, gaudy clothing and is cursed with a physical disability – she was born with a handphone permanently attached to her right ear. Her father disowns her ... In a fit of anguish, she becomes a psychotic and is obsessed with the Deputy Prime Minister. ... into her small Christian Dior handbag. ... her body is made into a statue posing fashionably in front of the steps of the High Court building in Kuala Lumpur. Her distraught brother – Az One – becomes psychotic too and becomes obsessed with a local singer actress (watch out for "Fatal Attraction II"!).

A This movie was also awarded the Oscar for Best Sound Recording by Sng Chihuahua.

[21] From the evidence adduced by the plaintiff it is clear that the plaintiff was never married, let alone to a Filipino. Her connection to the trial of former Deputy Prime Minister, revolves around the publication of "50 Dalil" and its author Khalid Jeffry, mentioned in the article as "Caled Jeffry" and "Pulp Dalil" respectively. She was never disowned by her father. The name "Ummi Thurman Ali" resembled the plaintiff's name, "Ummi Hafilda Ali". It is a known fact that she has a brother by the name of Azwan bin Ali. In her evidence, she testified how she was ostracised by her friends after the publication of this article specifically during the teraweh prayer.

[22] As stated earlier, a statement is defamatory when it injures the reputation of another by exposing him to hatred, contempt or ridicule or which tends to lower him in the esteem of right-thinking members of society. And the words of that article must be given its natural and ordinary meaning.

[23] It was argued by all the defendants that the statement complained of, is not defamatory of the plaintiff when given its natural and ordinary meaning. Whether or not the words complained of are defamatory or not, they must be understood in their ordinary and natural sense ie, the meaning that the words would convey to the ordinary man. What is natural and ordinary meaning of words is a matter of construction.

[24] In *Hasnul bin Abdul Hadi v. Bulat bin Mohamed & Anor* [1978] 1 MLJ 75, the court held that to call a person a liar, "Abu Jahal", is defamatory and the publication of the words "Abu Jahal" is actionable per se. The Plaintiff need not prove that he had suffered any damage. Ibrahim J said....

> It is established that "Abu Jahal" was the nickname given to a person named Amru bin Hisham who was one of the chief enemies of Prophet Mohamad. "Abu" means father and "Jahal" means stupid (or ignorant) .... "Abu Jahal" may be used to denote a Muslim who has one of the qualities, character and attitudes of Amru bin Hisham eg, a person who tells lie and that "one of the ways of disrupting the good work of another would be by telling lies about him." I am therefore of the view that the words used were defamatory of the Plaintiff ...

[25] It is clear to this court that the statements above, published as stated in the article clearly puts the plaintiff in a bad light (to put it mildly). It portrayed that the plaintiff was a prostitute, a mentally unstable person obsessed with the former Deputy Prime Minister, and that she had a bad taste in clothing, that she was disowned by her own father, that she co-authored the "50 Dalil" book, and that she was referred to as a tacky bimbo (brainless woman).

[26] But was the statement defamatory? Taking its ordinary and natural meaning. The answer must be in the affirmative. It is clear that the statement had indeed lowered her in the estimation of right thinking members of society and that the article had exposed the plaintiff to hatred, contempt or ridicule.

[27] Did the statement refer to the plaintiff?

[28] It is essential that the words complained of must refer to the plaintiff and not some other person, real or imaginary.

[29] In *Morgan v. Odhams Press Ltd* [1971] 1 WLR 1239, the defendants published in their newspaper an article in which it was stated that a "dog-doping girl was kidnapped last week by members of the gang and kept in a house in Finchley". The girl in question had in fact been staying on several occasions in the past with the plaintiff, who had a house on the border of Finchley. He sued the defendants, alleging that his friends, on reading the article, had assumed that he was one of the girl's kidnappers. The Court of Appeal held that the case should not have been allowed to go to the jury because the article did not contain any pointer indicating that it referred to the plaintiff. The House of Lord, by a majority, disagreed with this and ordered a new trial on damages only. Lord Guest said that the question of reference imposes an objective test, a question that is purely of identity. Further he said that the appropriate question be asked is would an ordinary reader, "fair minded and not avid for scandal, not unduly suspicious", considers the words complained of to refer to the plaintiff.

[30] In considering this question, the court must not read the offending passages in isolation. An ordinary reader would note that that the surrounding passages in the article refer specifically to the plaintiff. From the very beginning, in her witness statement, the plaintiff testified that she was informed of the article by her friend, one Arbaie by phone. Later she went to look for the article in

Harakah. This piece of evidence clearly shows, although probably not intentionally, by reading the article, Arbaie knew that the article must have referred to the plaintiff. Otherwise why would Arbaie inform the plaintiff of the article?

[31] The evidence of PW3 further supported the fact that an ordinary person upon reading this article would have no doubt as to whom the article was referring to. He could clearly identify all of the characters depicted in the article despite the defendants contention that the characters were fictitious, non factual, non existent and a satire. Not only PW3 could identify the characters, but he could also relate the circumstances surrounding the characters.

[32] In my view PW3 is indeed the ordinary man in the street and an educated man with a considerable knowledge of Malaysian political scene. Apart from that, events leading up to the arrest of the former Deputy Prime Minister and the criminal trial at that point of time was uppermost in the minds of members of the public who read newspapers.

[33] In *Syed Husin Ali v. Syarikat Perchetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 56, Mohamed Azmi J (as he then was) said at p. 58:

> Thus the test of defamatory nature of a statement is its tendency to excite against the Plaintiff the adverse opinion of others, **although no one believes the statement to be true** (emphasis added). Another test is: would the words tend to lower the plaintiff in the estimation of right thinking members of society generally? The typical type of defamation is an attack upon the moral character of the plaintiff attributing crime, dishonesty, untruthfulness, ingratitude or cruelty.

[34] Finally, taking these facts and reading the article in the way in which an ordinary man having knowledge of those facts, would read it, there is no doubt that the article referred to the plaintiff. It is this impression which would be created on such ordinary man possessing knowledge of the necessary facts which will determine whether this element is satisfied.

[35] Therefore, on the facts and evidence adduced in court, and the surrounding circumstances the irresistible conclusion is that the article refers to the plaintiff and not someone else.

Publication

[36] Publication has been defined as "making known the defamatory matter after it has been written to some person other than the person of whom it is written," per Lord Evershed MR in *Pullman v. W Hill & Co. Ltd.* [1891] QB 524, 527. The impugned article was indeed published in Harakah and Harakah at that particular time had a sizeable circulation.

[37] PW2, who is the Principal Secretary at the Publication Contract Unit (Bahagian C) of the Ministry of Home Affairs, in his evidence said that in 1999, the number of copies sold was 250,000 per publication. This figure was quoted not by PW2 but from the applicant's application form – one Nasarudin bin Mat on behalf of the first Defendant since a publication permit for Harakah must be renewed annually. From his Departmental monitoring, Harakah in 1999 had reached even non members despite its permit that restricted the sale of Harakah to members only.

[38] PW1 in her evidence stated that when informed of this impugned article being published in Harakah, she went to look for it and found Harakah being sold at a newsvendor in Kedai Buku Majalah dan Alat-Alat Tulis Pustaka Bangsar, No 25, Persiaran Ara Kiri, Taman Lucky 59100 Bangsar Kuala Lumpur.

[39] Perusing the defence of 1st, 2nd and 3rd and 4th defendants, it was contended, among others, that the article was a satire, made in jest, humorous, fictional and an absurdity.

[40] In my view there is nothing humorous in calling someone "a small time hooker" nor is it a laughable matter in ridiculing ones personal life or ridiculing a person's disability. In fact this article is an insult to one's intelligence.

[41] The 4th defendant's act of printing it without reading the contents, borders on a criminal act. The court finds that the 4th defendant's act is a blatant and reckless act of profiteering irregardless of the indemnity agreed to by the 1st defendant.

[42] The 4th Defendant's Defence of Innocent Dissemination is not borne out, in the light of the evidence adduced at the trial. The 4th defendant's witness clearly admitted in his cross examination as follows:

A If I had asked publishers 1 to 3 Defendant to give me more time before I print, I would have lost my business. In this case I allowed money consideration to dictate the event of printing this article in a hurry. **It was a reckless act.** (emphasis added)

B I was comforted by the fact that PAS would indemnify me. I do not know how many copies I publish in March 1999. It was most sought after newspaper I deny that I have more than an hour's notice to publish this article.

C If I had read any article which to my mind was seditious or defamatory I would not have printed it.

After printing the article, I forward an opinion. When I saw the picture in the article I was curious but I never read the article before printing.

D **[43]** Having considered all the issues and the defences of all parties, and having heard the evidence of the witnesses, this court has reached an irresistible conclusion that the words appearing in the article as published in Harakah by the 1st, 2nd and 3rd defendants and printed by the 4th defendant are indeed E defamatory of the plaintiff. The plaintiff has indeed proved her case against the defendants on a balance of probabilities.

Damages

[44] On the issue raised by the plaintiff in her evidence regarding F her loss of income and the loss of Pemadam contracts and advertisement contract, from Malaysia Airport, the court finds that such testimony was unsupported by any conclusive evidence and therefore this court shall not award any special damages.

G **[45]** The plaintiff also claims that due to this defamatory statements about her, she had lost the possibilities of marriage despite her having quite a number of eligible suitors prior to the publication of this article. This court finds her in the quite marriageable age at the time of this action and to a certain extend H it could probably affect her prospect of marriage. Bearing in mind that the plaintiff being a Muslim Malay women in a society that still holds dear to the traditional concept of chastity and sanctity of marriage, such publication by the defendants would not doubt cast an aspersion of negativity that could stigmatise her for a very I long time. Evidence of this was in her testimony when she stated that she was shunned by people at religious functions and that

she had received phone calls where she was called names like "perempuan sundal" and "bastard" which inevitably affected her friendships and her reputation as a businesswoman. In this respect the provisions of s. 4 of the Defamation Act would be applicable, wherein it states:

> Words spoken and published which impute unchastity of adultery to any woman or girl shall not require special damage to render them actionable.

[46] It is clear before this court that the 4th defendant had never made any attempt to amend the offending article before publication and did not, or refused to offer any apology to the plaintiff. None of the parties ever make any attempt to verify the facts, truth, or otherwise, of the article before publishing it.

[47] As a general rule, in an action for defamation, damages awarded to the plaintiff are assessed on a compensatory basis and the trend now indicates that it should be on a modest scale.

[48] This court agrees with the submission by the 1st, 2nd and 3rd defendants with regards to mega awards for general damages in defamation cases which should be capped.

[49] In an appeal against an award of damages in a defamation suit, *Abdul Hamid Mohamad JCA (now FCJ) in Karpal Singh a/l Ram Singh v. DP Vijandran* [2001] 3 CLJ 871 stated the applicable principle:

> The principle that this court should apply is clear: Whether this court is of the view that the trial judge had 'acted on a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered'. (see *Ling Wah Press (M) Sdn Bhd & Ors v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals* and the cases referred to therein).
>
> Whereas on the quantum of damages, His Lordship at p 185 C to E observed:
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> Until the arrival of Vincent Tan in 1995, the highest award ever given by the court in this country was RM100,000. Vincent Tan sky rocketed the awards. When the award was confirmed by the Court of Appeal, what was an isolated pinnacle in an otherwise undulating plain, the trend is set. When the Federal Court confirmed it, it became a binding precedent in all the courts in

A this country. But, now the Court of Appeal in *Liew Yew Tiam* has had second thoughts about it. The learned Judge of the Court of Appeal who wrote the main judgment in MGG Pillai has sought to distinguish *MGG Pillai*'s case. 'It is a decision that has been much misunderstood and the trend should be checked,' he said.

B **[50]** In the case of *Utusan Melayu (M) Bhd & Ors v. Tjanting Handicraft Sdn Bhd & Anor* [2005] 1 CLJ 71, Nik Hashim JCA (as he then was) among others held that:

Thus, having regard to the principles of law established by the
C authorities and to the relevant circumstances of this case, we are of the view that the quantum of damages awarded by the learned trial judge is grossly excessive. In our view, the following awards are more reasonable:

(i) to the first respondent, the sum of RM100,000 as general
D damages for slander of goods;

(ii) to the second respondent, the sum of RM100,000 as general damages for libel;

(iii) to the second respondent, the sum of RM50,000 as
E aggravated damages.

The total award made against the appellants would be RM250,000.

Accordingly, the appeal on liability is dismissed and the appeal on
F quantum is allowed to the extent that the award of RM1.3M as damages is now reduced to RM250,000. As the appellants failed in the appeal against liability but succeeded partly on the quantum, we award half costs to the appellants.

G **[51]** This court also felt that a global award for damages in defamatory cases should be the practice following the case of *Chin Choon @ Chin Tee Fut v. Chua Jui Meng* [2005] 2 CLJ 569 where Gopal Sri Ram JCA held that:

There is one matter of some importance that this case has raised.
H It appears to be the respondent's argument that separate awards for aggravated and exemplary damages should be made. That is what the High Court did. With respect, we disagree with this approach. For many years it was thought that in all cases of tort global awards should be made, including in claims for personal injuries. However, only in respect of claims for personal injuries,
I when the courts started awarding interest at different rates on the different heads of damages, it became necessary for courts to

make separate awards for pain and suffering and loss of amenities, actual loss of income, future loss and special damages. But in defamation cases it is never the practice to award interest on each separate head of damages. Interest is merely granted on the single award. In our judgment, we should, in defamation cases, maintain the age old practice of making a global award in order to limit the size of awards. Otherwise we will have runaway damages once again. The speech of Lord Hailsham in *Cassell v. Broome* appears to fairly support the view we take of the matter.

[52] In the circumstances of the fact of this case this court awards damages as follows:

1. RM100,000 in general damages against 1st, 2nd and 3rd defendants;

2. RM100,000 in general damages against the 4th defendant; and

3. 8% PA interest on the judgment sum from the date of filing of the writ until full realisation;

4. an injunction restraining the defendants whether jointly or severally and whether by themselves, their agent or servants or otherwise from further publishing the said words or any similar words defamatory of the plaintiff.

5. cost to the plaintiff.